

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

| | | |
|--------------------------|---|----------------------------|
| UNITED STATES OF AMERICA | : | Criminal No. 1:00-CR-00023 |
| | : | |
| v. | : | (Judge Caldwell) |
| | : | |
| LIVINGSTON BERNARD | : | (Electronically Filed) |

MOTION FOR RELIEF UNDER 18 U.S.C. § 3582(c)

AND NOW comes Livingston Bernard, by his attorney, Heidi R. Freese, of the Federal Public Defender's Office, and files this Motion for Relief Under 18 U.S.C. § 3582(c), and in support thereof, avers as follows:

1. On May 12, 2000, Livingston Bernard pled guilty to conspiracy to distribute and possess with intent to manufacture and distribute 50 grams or more of cocaine base, a/k/a "crack," in violation of 21 U.S.C. § 846.
2. The Court ordered the preparation of a presentence report.
3. The November 1, 1998, Edition of the United States Sentencing Guidelines Manual was used to calculate Mr. Bernard's sentencing guideline range.
4. The presentence report provides that Livingston Bernard was accountable for at least 150 grams but less than 500 grams of crack cocaine.

5. The presentence report listed the base offense level as 34. Two points were added pursuant to USSG § 2D1.1(b)(1), for a total offense level of 36.
6. On January 3, 2001, Mr. Livingston appeared before this Honorable Court for sentencing.
7. The Court adopted the presentence report, except the Court found that Mr. Bernard accepted responsibility for the offense. The Court calculated a total offense level of 33 for Mr. Bernard.
8. Livingston Bernard was assigned a criminal history category of II.
9. Mr. Bernard's sentencing guideline range was 151 to 188 months.
10. On January 3, 2001, this Honorable Court sentenced Mr. Bernard to a term of 151 months imprisonment, representing a sentence at the bottom of the guideline range.
11. Livingston Bernard is serving his sentence at FCI Beaumont (Medium).
12. Mr. Bernard's projected release date is January 28, 2011.
13. On November 1, 2007, the United States Sentencing Commission amended the Drug Quantity Table resulting in a two level reduction in offense level for an offense involving at least 150 grams but less than 500 grams of cocaine base .

14. On December 12, 2007, the United States Sentencing Commission announced its decision to apply the amendments to the crack guidelines retroactively, effective March 3, 2008, and listed Amendment 706 in the new USSG § 1B1.10(c).

15. Pursuant to 18 U.S.C. § 3582(c)(2), “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . upon motion of the defendant . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable,”

16. Under the retroactive application of the amendment to the sentencing guidelines, Livingston Bernard’s new base offense level is 32. Two points are added pursuant to USSG § 2D1.1(b)(1), for an amended adjusted offense level of 34.

17. With a three-level reduction for acceptance of responsibility, Mr. Bernard’s amended total offense level is 31.

18. An offense level of 31 and a criminal history category of II results in a now advisory guideline imprisonment range of 121 to 151 months.

19. Because Mr. Bernard's initial sentence of 151 months was at the bottom of the guideline range, Mr. Bernard respectfully requests that this Honorable Court impose a sentence of 121 months, a sentence at the bottom of the amended guideline range, in accordance with 18 U.S.C. § 3582(c)(2).

WHEREFORE, it is respectfully requested that this Honorable Court grant the foregoing Motion for Relief Under 18 U.S.C. § 3582(c).

Respectfully submitted,

Date: May 15, 2008

/s/ Heidi R. Freese

HEIDI R. FREESE, ESQUIRE

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CERTIFICATE OF SERVICE

I, Heidi R. Freese of the Federal Public Defender's Office, do hereby certify that I served a copy of the foregoing **MOTION FOR RELIEF UNDER 18 U.S.C. § 3582(c)(2)**, via Electronic Case Filing, or by placing a copy in the United States mail, first class in Harrisburg, Pennsylvania, addressed to the following:

MARTIN C. CARLSON, ESQUIRE
United States Attorney's Office

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LIVINGSTON BERNARD

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Date: May 15, 2008

/s/ Heidi R. Freese

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